

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA)
)
 v.)) CASE NO: 2:06-cr-108-MHT
)
 GARETT ALBERT DYKES)

UNOPPOSED MOTION TO SUPPLEMENT THE RECORD

COMES NOW the Appellant, Garrett Albert Dykes ("Mr. Dykes"), by and through his undersigned counsel, Christine Freeman, and pursuant to Federal Rule of Appellate Procedure 10, respectfully moves this Honorable Court to permit him to supplement the record on appeal. As grounds for granting this Motion, undersigned counsel sets forth the following:

1. Mr. Dykes is arguing in his appeal brief that 18 U.S.C. §2251(a) is unconstitutional on its face because it exceeds Congress' power under the Commerce Clause of the United States Constitution by regulating activity that is purely local and noncommercial.

2. Mr. Dykes also argues in his appeal brief that 18 U.S.C. §2251(a) is unconstitutional as applied to the facts of his case because his production of one videotape containing child pornography, which never left his home results in an attenuated connection between his activity and interstate commerce. Additionally, Mr. Dykes asserts in his appeal brief that this Court's holding in *United States v. Maxwell*, 446 F.3d 1210 (11th Cir. 2006), misapplies the U.S. Supreme Court's opinion in *Gonzalez v. Raich*, 545 U.S. 1 (2005).

3. In an effort to support these arguments, Mr. Dykes' makes reference to the criminal sentence of imprisonment entered against him on October 27, 2006, in the Circuit Court of Elmore

County, Alabama for, among other things, production of obscene material involving a person under twelve years of age in violation of Alabama Code 13A-12-197.

4. The sentencing hearing transcript from the Circuit Court of Elmore County, Alabama has not previously been made a part of the record in this case. However, Mr. Dykes' seeks to have this sentencing transcript made a part of the record on appeal.

5. Mr. Dykes is currently incarcerated.

6. The United States Attorney involved in this case has indicated that he does not oppose this motion or the supplementation of the record on appeal.

7. Although the materials sought to be added may not "conclusively resolve [the] issue on appeal, [this Court] may allow supplementation in the aid of making an informed decision."

United States v. Millon Air, Inc., 341 F.3d 1220, 1225 n.4 (11th Cir. 2003)(citing *Cabalceta v. Standard Fruit Co.*, 883 F.2d 1553, 1555 (11th Cir. 1989).

ACCORDINGLY, Garett Dykes respectfully requests that this Court grant his Motion to Supplement the Record on Appeal.

Respectfully submitted,

s/Christine A. Freeman
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CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following: Susan Redmond, Esquire, Assistant United States Attorney, One Court Square, Suite 201, Montgomery, Alabama 36104.

s/Christine A. Freeman
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APPENDIX A

3 STATE OF ALABAMA,

4 Plaintiff,

5 V.S.

X CC - 05 - 213

6 GARRETT DYKES,

7 Defendant.

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9 SENTENCING HEARING

10 The above-styled cause came on to be heard
11 before the Hon. John B. Bush, Circuit Judge
12 for the 19th Judicial Circuit of Alabama
13 commencing on October 27, 2006, at the Elmore
14 County Courthouse, Wetumpka, Alabama.

15

A P P E A R A N C E S

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18 FOR THE STATE OF ALABAMA:

19 Hon. Glenn Goggans.

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21 FOR THE DEFENDANT:

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Hon. D. Wayne Perdue.

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24. COURT REPORTER FOR THESE PROCEEDINGS: DUB HARRIS

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1 PROCEEDINGS

2 BY THE COURT: Dub, this is case number
3 CC-05-213, State of Alabama versus Garrett
4 Dykes, Mr. Dykes is here with his lawyer Mr.
5 Wayne Perdue, having previously entered pleas
6 of guilt to four counts of production of
7 obscene matter involving a person under twelve
8 years of age, and nine counts of sexual abuse
9 in the first degree. We're here today for
10 sentencing. Wayne, have y'all had an
11 opportunity to review the report?

12 BY MR. PERDUE: We have.

13 BY THE DEFENDANT: Yes, sir.

14 BY THE COURT: Do you have anything to
15 add to it?

16 BY MR. PERDUE: No, sir.

17 BY THE DEFENDANT: No, sir, Your Honor.

18 BY THE COURT: All right. The court
19 having accepted your pleas of guilt,
20 adjudicates you guilty to four counts of
21 production of obscene matter involving a
22 person under twelve years of age, and nine
23 counts of sexual abuse in the first degree. Do
24 you have anything to say to why the sentence
25 of law should not be imposed on you, or

1 anything that you'd like to say before the
2 court imposes sentence?

3 BY THE DEFENDANT: No, sir, Your Honor.

4 BY THE COURT: All right. Pursuant to
5 the plea agreement, the court sentences you to
6 serve a term of twentyone years in the
7 pentitentiary on these four counts of
8 production of obscene material involving a
9 person under the age of twelve;

10 And ten years in the penitentiary on the
11 nine counts of sexual abuse in the first
12 degree.

13 The court orders that you receive credit
14 for time that you have served, that each of
15 these sentences be served concurrently each
16 with the other, and also concurrent with your
17 federal time.

18 Further in this case, the court orders
19 that you pay court costs, fifty dollars
20 Victims Compensation Commission, restitution
21 in the amount of ten thousand eight hundred
22 seventy six dollars and thirty-three cents to
23 the Alabama Crime Victims Compensation
24 Commission, and reimburse the state seven
25 hundred fifty dollars to be applied against

1 Mr. Perdue's attorney's fees.

7 BY MR. GOGGANS: Your Honor, he's in
8 primary federal custody, and it's their
9 understanding, this sentence, he will serve
10 the federal time, that's where he would be
11 serving that federal time, and this would be
12 running CC with that.

13 BY MR. PERDUE: Further, the concurrent
14 time begins January 10, 2005. He's been in
15 confinement since that time, and that's the
16 plea agreement on the state and federal side,
17 that he gets credit for the time he's been in
18 jail, on both sides.

19 BY THE COURT: Right. And January 10,
20 '05?

21 BY MR. PERDUE: Yes.

22 BY THE COURT: I knew he had been in jail
23 since he had been arrested, but I didn't know
24 what the date was.

BY THE DEFENDANT: Thank you, Your Honor.

1 BY THE COURT: All right. Good luck, Mr.
2

2 Dykes.

3 BY THE DEFENDANT: I appreciate it.

4 BY THE COURT: All right, Thank you.

5 (Court adjourned)

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C E R T I F I C A T E

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3 STATE OF ALABAMA,

4 COUNTY OF ELMORE

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6 I, DUB HARRIS, Special Roving Court
7 Reporter of the 19th Judicial Circuit for the State
8 of Alabama, do hereby certify as follows:

9 THAT I reported in shorthand the
10 foregoing proceedings in the foregoing styled
11 Cause at the time and place stated heretofore;

12 THAT I later reduced my shorthand notes
13 to computer-aided transcription, and the foregoing
14 pages contain a full, true and correct transcript
15 of the proceedings and testimony as herein set
16 out;

17 THAT I am neither of kin nor of counsel
18 to the parties to said cause, nor in any manner
19 interested in the results thereof.

20 DONE this 1st day of November, 2006.

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23 DUB HARRIS, REPORTER

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